

**Berlin School District v. AFSCME Council 93, Local 1444 and AFSCME Council 93, Local 1444 v. Berlin School District**, Decision No. 2011-282 (Case Nos. E-0020-1 & E-0020-2, Consolidated).

**Background:** In Case No. E-0020-1, the District claimed that the Union violated RSA 273-A:5, II (d), (f), & (g) when it filed a demand to arbitrate a grievance concerning “bargaining unit work” allegedly being performed by non-bargaining unit personnel because the grievance was not arbitrable. The Union denies the charges and claimed that the grievance was arbitrable and was timely filed.

In Case No. E-0020-3, the Union claimed that the District’s unilateral decision to assign “bargaining unit work” to non-bargaining unit personnel, which allegedly resulted, among other things, in loss of overtime, constituted a change in conditions of employment and violated RSA 273-A:5, I (e), (g), (h), & (i). The District denied the charges and asserted, among other things, that matters such as reorganization, hiring, and assignment of work duties were within the District’s management rights and that the Union had never requested to bargain the impact of the District’s reorganization decision.

**Decision:** The District’s complaint was denied because the Union’s grievance was timely and the District failed to prove that, under the “positive assurance” standard, the CBA could not be interpreted to encompass the subject matter of the grievance. The District was not obligated to bargain its reorganization decision because, under the circumstances of this case, the reorganization constituted a permissive and not mandatory subject of bargaining. Although the District was obligated to bargain the impact of its decision to reorganize the custodial department and assign work previously performed by the bargaining unit employees to a non-bargaining unit employee, the Union’s evidence was insufficient to prove that the District refused to bargain the impact. The Union’s RSA 273-A:5, I (e), (g), and (i) claims were denied. The Union’s breach of contract claim was dismissed because the parties’ agreement provided for a final and binding arbitration and there was no positive assurance that the dispute at issue was excluded from the contractual grievance procedure.

***Disclaimer: This summary is intended to provide a brief description of the issues in this case and the outcome. The summary is not a substitute for the decision, should not be relied upon in place of the decision, and should not be cited as controlling or relevant authority in PELRB proceedings or other proceedings.***